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Fifty-fifth anniversary of the Universal Declaration of Human Rights

Human rights questions: comprehensive implementation of and follow-up to the Vienna Declaration and Programme of Action

Security Council
Fifty-eighth year

Letter dated 1 December 2003 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

I have the honour to inform you that on the occasion of the tenth anniversary of the 1993 World Conference on Human Rights and the Vienna Declaration and Programme of Action, the Foreign Minister of Austria and the United Nations High Commissioner for Human Rights, in cooperation with the United Nations Office on Drugs and Crime, convened an international symposium on the theme "The role of judges in the promotion and protection of human rights: strengthening inter-agency cooperation". The symposium was held on 24 November 2003 in Vienna and was attended by high-ranking representatives of governmental and non-governmental organizations, as well as by eminent judges and experts.

The symposium focused on the role of the judiciary, which lies at the core of the national systems for the promotion and protection of human rights. It was motivated by the recognition that the role of judges is pivotal for human rights, but that too often their fundamental task and its long-term impact on the overall human rights situation of a country is underestimated. The objective of the symposium was to draw attention to the needs of judges for support as regards their independence, impartiality, competence and integrity, and to facilitate a more effective and better coordinated approach by all relevant international actors inside and outside the United Nations system in assisting countries in their efforts to strengthen the role of judges in the promotion and protection of human rights.

The many constructive ideas and proposals made in the preparation of and during the symposium were embodied in the Vienna Declaration on the Role of Judges in the Promotion and Protection of Human Rights and Fundamental Freedoms, which I have the pleasure of transmitting to you (see annex).

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The Declaration constitutes the contribution of Austria to the implementation of General Assembly decision 57/535, in which the General Assembly decided that during its fifty-eighth session, the plenary meeting on 10 December 2003 marking the fifty-fifth anniversary of the Universal Declaration on Human Rights would also be devoted to the commemoration of the tenth anniversary of the adoption of the Vienna Declaration and Programme of Action with contributions by Governments, the United Nations High Commissioner for Human Rights and relevant organs, funds and agencies of the United Nations system within their respective mandates.

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the General Assembly and of the Security Council.

(*Signed*) Dr. Gerhard **Pfanzelter**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Austria to the United Nations

Annex to the letter dated 1 December 2003 from the Permanent Representative of Austria to the United Nations addressed to the Secretary-General

24 November 2003

Vienna Declaration on the Role of Judges in the Promotion and Protection of Human Rights and Fundamental Freedoms

The participants in the Symposium on "The Role of Judges in the Promotion and Protection of Human Rights — strengthening interagency cooperation", convened in Vienna on 24 November 2003 upon the initiative of the Foreign Minister of Austria and the UN High Commissioner for Human Rights to mark the 10th Anniversary of the 1993 World Conference on Human Rights and the Vienna Declaration and Programme of Action, agreed on the following Declaration, bearing in mind that paragraph 27 of the Vienna Declaration and Programme of Action states the following:

> **"Every state should provide an effective framework to redress human rights grievances or violations. The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development. In this context, institutions concerned with the administration of justice should be properly funded, and an increased level of both technical and financial assistance should be provided by the international community. It is incumbent upon the United Nations to make use of special programmes of advisory services on a priority basis for the achievement of a strong and independent administration of justice."**

I. The role of judges in safeguarding human rights and fundamental freedoms

1. Judges are front-line actors in the protection of human rights. Their role is pivotal in the process of enabling people to assert their rights and in enforcing their claims to those rights. Independence and impartiality as well as competence and integrity of the judiciary are key to the protection of human rights, given that the implementation of all rights ultimately depend upon the proper administration of justice.

2. The domestic justice system is one of the pillars of the State and as such has an obligation to ensure the observance of the State's international legal obligations. An independent and impartial judiciary that is familiar with international norms and standards, including relevant case law, can best articulate and activate the normative framework for the protection of human rights. In doing so judges also act as catalysts for law reform and social change, defending the constitution, establishing norms and contributing to the progress towards the full enjoyment of human rights and sustainable human development. Judges also have a crucial role in balancing the requirements of defending society against invidious types of crime - such as terrorism, organized crime and corruption - and preserving fundamental rights and freedoms. The rule of law and a fair judicial system can also reduce injustices in society and deter the resort to force for settling disputes.

3. Empowering the judiciary, ensuring their independence and equipping them with a comprehensive awareness of international standards is therefore vital for the protection of human rights, and regional initiatives in this regard are welcomed and encouraged. In this context reference is made to the "Bangalore Principles of Judicial Conduct" and the "Basic Principles on the Independence of the Judiciary" (General Assembly Resolution 40/146), with the proviso that it might be timely to revisit the latter in the light of recent developments.

4. Whilst judges have a primary role in the promotion and protection of human rights at the national level, they are also key in facilitating international cooperation in combating trans-national crimes and crimes under international law. Moreover, international tribunals and courts, in particular the ICC and regional human rights courts such as the European Court of Human Rights and the Inter-American Court of Human Rights, are an important instrument to complement and supplement the national mechanisms to ensure effective redress for violations of international human rights and humanitarian law. In this context, the importance of the establishment of the African Court on Human and Peoples' Rights is also to be welcomed. By fighting impunity, those courts strengthen the rule of law, thus making a fundamental contribution to peace, security and the respect of human rights.

II. The role of judges and their needs in conflict and post-conflict situations

5. Human rights violations and public perceptions of failure to secure justice are at the root of many conflicts. In such situations ensuring and sustaining the legitimacy of those institutions which safeguard human rights is a priority, recognizing that legitimacy depends on responsiveness to the rights of the human being and positive action taken to guarantee those rights.

6. In conflict situations it is through respect for international humanitarian, human rights and refugee law that the fundamental rights of the human being must be protected. In such situations members of the judiciary and of other law enforcement bodies have an obligation to observe those norms.

7. In post-conflict situations the re-establishment of the rule of law in a manner that protects and respects the human rights of all persons is key to an enduring peace and should therefore be a crucial element of peacekeeping. SC-Res. 1325 (2000) op11 emphasizes the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes including those relating to sexual and other violence against women and girls. Such crimes should also be excluded from any amnesty provisions.

8. All efforts to promote peace, justice and national reconciliation have to go hand-in-hand with those to foster accountability and respect for human rights. Particularly in post-conflict situations, problems undermining the smooth and responsive functioning of the administration of the judicial branch, such as lack of resources, non-payment of salaries, damage to physical infrastructure, inappropriate executive branch influence, judicial corruption, lack of training for judges and court staff and lack of legal reference materials as well as the need for reform of the legal framework have to be addressed.

III. Action recommended

A. Action by States

9. States are called upon to

a) **enshrine** the independence of the judiciary from the executive and legislative branches in the constitution and/or laws of each state and observe this principle in practice;

b) **ensure** a transparent and independent process for selection and promotion of judges at all levels without discrimination of any kind which is based on objective criteria, primarily professional qualifications, training, and impartiality, and not political considerations. Measures should be taken to ensure gender equality and also a fair representation of members of minority communities within the judiciary and their staff;

c) **appoint** judges and prosecutors in numbers that are sufficient in relation to case loads;

d) **ensure** that all members of the judiciary receive comprehensive and continuing training on international and regional human rights standards and humanitarian law, including specialized gender and child rights

training as well as training on the use of non-custodial and restorative justice measures. Judiciary should also be provided with specialized training to handle complex crimes and with courses on new technologies available;

e) **ensure** that all courts and members of the judiciary are provided with adequate resources to exercise their functions in a professional, objective, conscientious and impartial manner and that they receive adequate salaries;

f) **support** the judiciary in combating corruption in society and among their own ranks, since a corrupted judiciary will neither be independent nor impartial;

g) **ensure** adequate protection, including from political interference, pressure or attacks, of judges, court staff and others involved in the administration of justice, including prosecutors and defence counsels, as well as the protection of victims and witnesses;

h) **take measures** to promote fair sentencing, and to ensure monitoring of prison conditions and rehabilitation programmes as well as meaningful post release support and probation services;

i) **ensure** access of independent monitors to persons deprived of their liberty as well as the confidentiality of their conversations;

j) **ensure** access to justice and judicial remedies, including habeas corpus, for all, limit pre-trial detentions and reduce backlogs in court proceedings;

k) **foster** cooperation among all justice actors to improve the functioning of the system to guarantee the optimal protection of human rights and to ensure effective implementation without undue delay of judgement;

l) **provide** an effective judicial framework of remedies to redress human rights violations, including the possibility for national courts to decide on human rights violations and on reparations to victims of such violations;

m) **cooperate** in establishing a consolidated international data base on important judgements in the area of human rights law.

B. Action by Intergovernmental and Non-Governmental Organisations

10. Intergovernmental and Non-Governmental Organisations are called upon to

a) **raise** judicial awareness of existing international and regional standards and practice concerning the independence of justice and the role of the judiciary in the protection of human rights in particular through wide dissemination of information on international human rights law, human rights case law, guidance materials on equal rights and justice for women, a manual on the rights of children, compilations of international standards and the United Nations manual on human rights in the administration of justice in local languages as well as through workshops and seminars;

b) **develop** and **conduct** training and awareness raising projects in a participatory manner addressing capacity needs and weaknesses as identified in the specific country context, focusing on the sustainable development of judicial capacity and structures and develop appropriate training evaluation criteria;

c) **ensure** adequate representation of female judges and an overall gender perspective in their relevant projects;

d) **encourage** cooperation among judges at the sub-regional or regional level through the organization of meetings, workshops and seminars on international human rights law taking into account the proposal by the Office of the High Commissioner for Human Rights contained in the report of the Secretary General on strengthening the rule of law (Doc. A/57/275), to convene a focused strategy meeting with associations specializing in the role of judges and lawyers aimed at deepening cooperation in this area;

e) **contribute** to raising awareness among judges of the specific situation and problems of vulnerable groups in society, in particular with a view to avoiding discrimination in the administration of justice;

f) **sensitise** the broad public and key governance institutions to the importance of the independence of judges and lawyers as precondition for institutionalising an effective judiciary;

g) **support** the capacity of the legal community to respond to threats to its independence and impartiality;

h) **enhance** judicial integrity through the adoption and dissemination of codes of conduct, and through assistance in the establishment of efficient public complaints mechanisms and credible and objective disciplinary control bodies;

i) **strengthen** coordination and cooperation both at headquarters and field level in the design and execution of assistance projects so as to increase efficiency and to avoid duplication of efforts and waste of scarce resources;

j) **establish** an appropriate consolidated data-base with a view to facilitating the exchange of information on any projects and concrete action undertaken in this field;

k) **carry out** regular assessments of the performance of States' judicial systems on the basis of common statistical criteria. One such example is the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ).

C. Specific action in connection with conflict and post-conflict situations

11. States and, in accordance with their respective mandates, Intergovernmental and Non-Governmental Organisations are called upon to

a) **ensure** that the rule of law, the independence of the judicial system and its functioning are as far as possible preserved in conflict situations and that judges and their staff be protected from unlawful pressure hindering them from exercising their function;

b) **ensure** that members of the judiciary and law enforcement agencies receive comprehensive information and training on international humanitarian law and that they are aware of their rights and obligations under this body of law in order to allow them to contribute effectively to its application and respect;

c) **include**, where possible, provisions in instruments resulting from conflict resolution processes under international auspices, which ensure the independence, impartiality, competence and integrity of the judicial power;

d) **ensure** comprehensive and continuing training of those involved in peace-keeping on international human rights and humanitarian law, including specialized training on gender and juvenile justice issues, on local law as well as on relevant methodologies and procedures;

e) **cooperate** with local actors, building, where possible, upon existing rule of law institutions, laws, traditions and cultures and **ensure** that there is national ownership of and active participation in the administration of justice and in efforts to establish a culture of respect for the rule of law;

f) **ensure** that people with relevant experience, including local actors, are trained to monitor and publicly report on all aspects of the administration of justice in accordance with international standards, and that monitors are granted access to all places where people are deprived of their liberty and have the right to confidential communication with such persons;

g) **ensure** a smooth transition from the peacekeeping phase to longer-term post-conflict peace-building and development efforts;

h) **take into account** specific difficulties in the administration of justice in IDP and refugee camps and consider establishing legal advice centres and mobile court systems.

i) **identify and address** in a systematic manner possible contradictions between national laws and international human rights law;

j) **enable**, where appropriate and in compliance with international human rights law, the use of traditional or alternative dispute settlement and mediation mechanisms, without prejudicing access to courts.

The participants agreed to concert their efforts for an appropriate follow-up to these recommendations.

List of participants

The Symposium on "The Role of Judges in the Promotion and Protection of Human Rights -- strengthening interagency cooperation", was convened in Vienna on 24 November 2003 upon the initiative of the Foreign Minister of Austria and the UN High Commissioner for Human Rights in cooperation with UNODC. The meeting was opened by Austrian Foreign Minister Benita Ferrero-Waldner. It was chaired by the Acting High Commissioner for Human Rights Bertrand Ramcharan. Austria was represented by Georg Mautner-Markhof, Director for Human Rights in the Foreign Ministry and Margit Bruck-Friedrich, Counsellor for Human Rights in the Foreign Ministry.

The following organizations and experts participated in the Symposium:

United Nations:

UNODC:	Mr. Antonio Maria Costa, Director General UNOV, Executive Director UNODC Mr. Eduardo Vetere, Director, Division for treaty affairs Mr. Michael Platzer, Officer in Charge, Rule of Law Section, Ms. Jo Dedeyne, Crime Prevention Officer
UNDP:	Mr. Magdy Martinez-Soliman, Practice Manager for Democratic Governance Mr. Patrick Van Weerelt, Human Rights Officer
UNHCR:	Mr. Christoph Bierwirth, Senior Liaison Officer for Human Rights
UNESCO:	Mr. Vladimir Volodin, Chief of the Human Rights and Development Section
DPKO:	Mr. Robert Pulver, Judicial Officer, Criminal Law and Judicial Advisory Unit
World Bank:	Mr. Salman M. A. Salman, Legal Counsel, Legal Department ESSD & International Law

Regional intergovernmental organisations:

Council of Europe:	Mr. Hans de Jonge, Director of External Relations
OSCE:	Amb. Ján Kubis, Secretary General
ODIHR:	Amb. Christian Strohal, Director Mr. Maximilian Hennig
AU:	Mr. Germain Baricako, Secretary to the African Commission on Human and Peoples' Rights

Non-Governmental Organisations:

ICJ:	Mr. Ernst Lueber, Acting Secretary General
AI:	Ms. Jill Heine, Legal Adviser
ICTJ:	Mr. Paul Seils, Senior Associate
Boltzmann Institute of Human Rights:	Prof. Manfred Nowak
International Bar Association:	Mr. Greg Mayne

Other Organisations:

Commonwealth Secretariat:	Mr. Hanif Vally, Head Human Rights Unit
ICRC:	Ms. Cristina Pellandini, Legal Adviser; Advisory Service on international humanitarian law
Judges/experts:	The Hon. Benjamin Odoki, Chief Justice of Uganda
	Mr. Rait Maruste, judge of Estonia at the European Court of Human Rights
	Mr. Param Cumaraswamy, former Special Rapporteur of the Commission on Human Rights on the independence of judges and lawyers
	Amb. Kurt Herndl (ret.), former UN-Assistant Secretary General for Human Rights, Rapporteur of the Symposium